IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

THURSDAY, THE 25TH JANUARY 2007 / 5TH MAGHA 1928

Crl.MC.No. 168 of 2007()

CC.1155/2003 of JUDL.MAGISTRATE OF FIRST CLASS-I, MUVATTUPUZHA

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PETITIONER: APPELLANT

SABU.P.K., S/O.KUTTAPPAN,
AGED 37 YEARS, PARAYIL HOUSE, KAVANA,
VAZHAKKULAM P.O., MUVATTUPUZHA, REPRESENTED
BY NEXT FRIEND, MR.RAJU.P.K., S/O.KUTTAPPAN,
PARAYAIL HOUSE, KAVANA, VAZHAKKULAM P.O.

BY ADV. SRI.GEORGE THOMAS (MEVADA)
SRI.NINU M.DAS
SMT.VEENA EBBY

RESPONDENTS:

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1. SHIBU JOSEPH,
THURUTHIPILLIL HOUSE, AVOLY P.O.,
MUVATTUPUZHA.

2. STATE OF KERALA, REP. BY THE
PUBLIC PROSECUTOR.

R2 BY PUBLIC PROSECUTOR SRI. P. RAVEENDRA BABU

THIS CRIMINAL MISC. CASE HAVING COME UP FOR ADMISSION ON 25/01/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

R. BASANT, J.

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Crl.M.C.No. 168 of 2007

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Dated this the 25th day of January, 2007

O R D E R

The petitioner has been found guilty, convicted and sentenced in a prosecution under Section 138 of the N.I. Act. He has preferred an appeal before the Appellate Court/Sessions Court, Ernakulam. The appeal has been preferred through the brother of the accused/appellant, one P.K. Raju. The said person has raised a contention before the learned Sessions Judge that the appellant/ accused is mentally ill and is not able to prosecute the appeal himself. Even before the trial court, the situation was so, it is contended. The application by the next friend to prefer the appeal on behalf of the petitioner is pending before the learned Sessions Judge as M.P. 23 of 2007. No decision has been taken in the matter. That petition stands posted for enquiry.

2. In the mean time, an application has also been filed to suspend the sentence. That petition is not taken up for consideration now as the petition for leave for the next friend to prefer the appeal is

not disposed of. It is in these circumstances that the petitioner has come to this Court through the next friend praying that there may be a direction that the execution of the sentence be suspended till the petition for leave for the next friend is considered and decided and thereafter the application for suspension is itself taken up for consideration.

3. I do not want to express any opinion on merits about the contention that the petitioner is mentally ill and consequently unable to prosecute the appeal. That will be decided by the learned Sessions Judge. However, I am satisfied that till that petition is decided and the application for suspension is itself taken up for consideration, a direction can be issued that the execution of the impugned sentence shall stand suspended on condition that the petitioner deposits two-third of the amount of the cheque within a period of one month from this date.

4. Considering the nature of the relief that I am granting in this Crl.M.C., I am satisfied that it is not necessary to wait for issue and return of notice to the respondent/complainant.

5. This Crl.M.C. is accordingly allowed in part, subject to the above conditions. The question of release of the amount so deposited

shall be considered by the learned Appellate Judge by passing an appropriate order, if so requested by the parties.

(R. BASANT)
Judge

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